



09/649,563

PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ashok V. Joshi et al.

Examiner: Christopher S. Kim

Serial No.: 09/649,563

Group Art Unit: 3752

Filed: August 28, 2000

Docket: MIC-98125CP01

Title: CONTROLLED RELEASE OF SUBSTANCES

PETITION TO THE DIRECTOR UNDER 37 C.F.R. §1.181
FOR WITHDRAWAL OF ABANDONMENT OF A PENDING APPLICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

Applicants respectfully petition the Director for reinstatement of the above-referenced application through the Director's supervisory authority under 37 C.F.R. §1.181. By this paper, Applicants' representative sets forth the facts involved and requests withdrawal of abandonment in order to prevent loss of rights and any further delay in prosecution. Applicants do not believe that any petition fee is due with this Petition, but should any such fee be required, the Director is authorized to charge it to Deposit Account No.: 50-3586, and to credit any overpayments thereto.

Statement of Facts

1. Applicants received a non-final Office Action from the USPTO mailed April 13, 2004. *See printout from Private Pair dated 03/08/2006 in Exhibit A.*

2. Applicants filed a response to the Office Action on August 13, 2004, a copy of which is provided herewith as Exhibit B.

3. A postage-paid, return receipt postcard was mailed with the Office Action response on August 13, 2004.

4. The return receipt postcard was received by Applicants' representative on August

23, 2004, bearing a datestamp of August 17, 2004 from the OIPE of the USPTO. *See copies of the front and back of the postcard provided herewith as Exhibit C.*

5. An entry on PAIR corresponding to an incoming amendment was made on August 17, 2004, the date that the OIPE stamped the postcard. *See printout from Private PAIR dated 03/08/2006 in Exhibit A.*

6. A next entry of "IFW TSS Processing by Tech Center Complete" was made on PAIR on October 31, 2005. *Id.*

7. A Notice of Abandonment for failure to reply to an Office Action was mailed to Applicant on November 2, 2005. *See Notice of Abandonment, Exhibit D.*

8. Following receipt of the Notice of Abandonment, Applicant initiated communication with Examiner Christopher S. Kim and with his supervisor, Examiner David A. Scherbel, who reported to Applicant that they had undertaken to investigate the matter and attempt to locate the documents filed.

9. Examiner Kim recommended filing of this Petition, unsure of how long the USPTO's internal investigation of the missing amendment would run.

9. No resolution of this matter has been reported to Applicants by the USPTO to date, as of March 8, 2006.

Petition

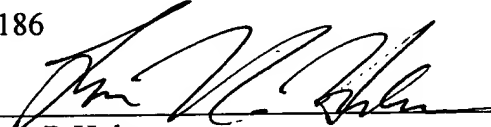
In order to further prosecution of this case and to prevent further delay, Applicants petition the Director to withdraw this Application from abandonment and to accept the timely-filed Reply to Office Action. A copy of the Reply to Office Action is enclosed herewith as Exhibit B, and a copy of the date-stamped postcard evidencing that the USPTO received the Reply in a timely manner is provided in Exhibit C. Applicant thus respectfully requests that Application Serial No.: 09/649,563 be reinstated and examined in proper time.

Should any additional information be required, the Director is respectfully requested to contact the Applicants' representative using the contact information provided below.

Respectfully submitted,

ASHOK V. JOSHI ET AL.

By their Representative,

801-978-2186
Date Mar 8, 2006 By 
Loren R Hulse
Reg. No. 46,784

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 8 day of March, 2006.

Loren R. Hulse
Name


Signature

Serial Number: 09/649,563
Filing Date: August 28, 2000
Title: CONTROLLED RELEASE OF SUBSTANCES

Page 4
Dkt: MIC-98125CP01

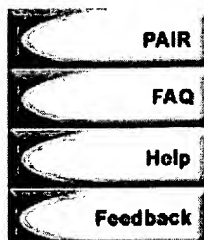
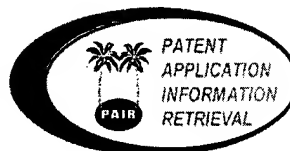
Exhibit A



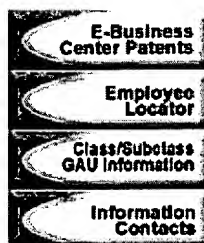
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PATENT APPLICATION INFORMATION RETRIEVAL



Other Links



Printer Friendly Version

Search results as of: 3-8-2006::16:33

Search results for application number: 09/649,563			
Application Number:	09/649,563	Customer Number:	55162
Filing or 371(c) Date:	08-28-2000	Status:	Abandoned -- Failure Respond to an Office
Application Type:	Utility	Status Date:	10-31-2005
Examiner Name:	KIM, CHRISTOPHER S	Location:	ELECTRONIC
Group Art Unit:	3752	Location Date:	-
Confirmation Number:	7691	Earliest Publication No:	-
Attorney Docket Number:	MIC-98125CP01	Earliest Publication Date:	-
Class/ Sub-Class:	239/034	Patent Number:	-
First Named Inventor:	Ashok Joshi, Salt lake City, UT (US)	Issue Date of Patent:	-
Title Of Invention:	Controlled release of substances		

Select Search Option

☒ Assignments

☐ Continuity Data

☐ Display References

☐ Image File Wrapper

File History	
Date	Contents Description
03-07-2006	Correspondence Address Change
11-02-2005	Mail Abandonment for Failure to Respond to Office Action
10-31-2005	Abandonment for Failure to Respond to Office Action
10-17-2005	IFW TSS Processing by Tech Center Complete
01-08-2001	Reference capture on IDS
01-08-2001	Information Disclosure Statement (IDS) Filed
08-17-2004	Workflow incoming amendment IFW
04-13-2004	Mail Non-Final Rejection
04-05-2004	Non-Final Rejection
03-19-2004	Date Forwarded to Examiner
03-19-2004	Date Forwarded to Examiner
03-15-2004	Request for Continued Examination (RCE)
03-19-2004	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)
03-15-2004	Workflow - Request for RCE - Begin
09-10-2003	Mail Final Rejection (PTOL - 326)

09-10-2003	Final Rejection
07-30-2003	Date Forwarded to Examiner
07-24-2003	Response after Non-Final Action
07-24-2003	Request for Extension of Time - Granted
01-21-2003	Mail Non-Final Rejection
01-16-2003	Non-Final Rejection
11-15-2002	Date Forwarded to Examiner
11-12-2002	Response to Election / Restriction Filed
10-02-2002	Mail Restriction Requirement
10-01-2002	Requirement for Restriction / Election
08-24-2002	Case Docketed to Examiner in GAU
06-28-2002	Application Dispatched from OIPE
06-28-2002	Application Is Now Complete
08-28-2000	Payment of additional filing fee/Preexam
08-28-2000	An assertion that the nature of the legal entities having property right in the invention is such that the patent authorizes the inventor to make, use, and sell the invention in the United States and to authorize others to do so
08-28-2000	A statement by one or more inventors satisfying the requirement of 35 U.S.C. 115, Oath of the Applicant
06-06-2002	Petition to Revive Application - Granted
04-10-2002	Petition Entered
01-22-2002	Petition Decision - Dismissed
11-20-2001	Petition Entered
10-17-2000	Notice Mailed--Application Incomplete--Filing Date Assigned
10-16-2000	Correspondence Address Change
09-14-2000	IFW Scan & PACR Auto Security Review
08-28-2000	Initial Exam Team nn

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Serial Number: 09/649,563
Filing Date: August 28, 2000
Title: CONTROLLED RELEASE OF SUBSTANCES

Page 5
Dkt: MIC-98125CP01

Exhibit B

**IN THE
UNITED STATES
PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: Ashok V. JOSHI

ATTY. DOCKET NO: MIC-98125CP01

SERIAL NO.: 09/649,563

CONFIRMATION NO.: 7691

FILED ON: August 28, 2000

FOR: CONTROLLED RELEASE OF
SUBSTANCES

RESPONSE TO
OFFICE ACTION

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION OF:
Art Unit 3752

EXAMINER:
Christopher S. Kim

Dear Examiner Kim:

The Applicant submits the following Reply to the Office Action mailed April 13, 2004, in which all the pending claims have been rejected or withdrawn. The shortened statutory period for reply has been set at three months from the mailing date of the Office Action, i.e., July 13, 2004. As such, this Reply is being filed with a petition for a one month extension to respond.

In response to the Office Action of April 13, 2004, please amend the above-identified application as follows:

Amendments to the Specification begin on page 2 of this paper.

Amendments to the Claims are reflected in the listing of claims which begins on page 3 of this paper.

Remarks/Arguments begin on page 5 of this paper.

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Micheal D. Lake	33727
William J. Lenz	44208
Joseph M. Kinsella Jr.	45743
Jacob D. Koering	51890
Nick Lee	54260

Amendments to the Specification:

Please insert the following heading and paragraph after the Title of the specification:

Related Applications

This patent application is a continuation-in-part and claims priority to U.S. Patent No. 6,109,539, filed February 24, 1998; which is a continuation-in-part of U.S. Patent No. 5,932,204, filed June 20, 1997; which is a continuation-in-part of U.S. Patent No. 5,765,751, filed July 26, 1996; and is related to U.S. Patent No. 6,419,163—all the contents of which are expressly incorporated herein by reference.

Amendments to the Claims:

There are no amendments to the claims. This listing of claims represents the present status of the pending claims in the application:

Listing of Claims:

1. (previously presented) A device for releasing a volatile substance comprising:

- a housing having an interior region, an outer surface, and an opening in at least one end;
- a volatile substance contained within the interior region of the housing;
- means for orienting the device such that gravity forces the volatile substance toward the opening;
- means for controllably releasing the volatile substance from the housing, and onto an emanator material positioned proximate the housing, wherein the controllably releasing means comprises a gas generating cell associated with the interior region;
- means for heating at least one of the volatile substance or air located with the housing, or the emanator material; and
- means for increasing the evaporation of the released volatile substance from the emanator material, wherein the evaporation increasing means comprises means for increasing circulation of air proximate at least one of the opening in the housing and the emanator material.

2-23. (deleted)

24. (previously presented) The invention according to Claim 1, wherein the heating means is associated with at least a portion of the emanator material.

25. (withdrawn)

26. (deleted)

27. (previously presented) The invention according to Claim 1, wherein the circulation increasing means comprises a fan.

28. (previously presented) A device for releasing a volatile substance comprising:

- a housing having an interior region, an outer surface, and an opening in at least one end;
- a volatile substance contained within the interior region of the housing;
- means for orienting the device such that gravity forces the volatile substance toward the opening;
- means for controllably releasing the volatile substance from the housing, and onto an emanator material positioned directly below the housing, wherein the controllably releasing means comprises a gas generating cell associated with the interior region; and
- means for heating the emanator material, positioned directly below the housing and the emanator material.

REMARKS/ARGUMENTS

In the Office Action, the Examiner has requested that a statement claiming priority and referencing the prior application(s) be inserted following the title of the application or as the first sentence of the specification.

The Examiner further objected to the drawings stating that every feature of the invention specified in the claims, i.e., gas generating cell recited in Claims 1 and 28, must be shown in the drawings or the features canceled from the claims.

Additionally, Claims 1, 24, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,810,253 ("*Ohayon*") in view of U.S. Patent No. 4,477,414 ("*Muramoto et al.*"). And Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ohayon* in view of *Muramoto et al.* as applied to Claim 1, and further in view of U.S. Patent No. 4,294,778 ("*DeLuca*").

The Applicant respectfully traverses the rejection to the claims.

No claims have been amended, deleted, or added.

No new matter has been added to the specification or the claims.

As such, Claims 1, 24, 27, and 28 are pending in this application.

Objection to the Drawings

The gas generating cell 95 of the Applicant's claims is shown throughout the drawings, most notably FIGS. 8 and 13. Because every feature of the claimed invention is shown in the drawings, the Applicant submits that correction to the drawings is unnecessary and respectfully requests that the objection to the drawings be removed.

Rejection of Claims 1, 24, and 28

Previously amended independent Claims 1 and 28 are directed to a device for releasing a volatile substance comprising, at least, a controllably releasing means including a gas generating cell associated with the interior region.

The Applicant respectfully disagrees with the Examiner's position that *Ohayon* discloses a device comprising a controllably releasing means comprising a gas generating cell (column 8, lines 3-6, "pressure therein may be increased by any number of different ways known in the art

including, e.g., a pump mechanism”).

Ohayon fails to disclose each and every element of the Applicant’s claimed invention. Most notably, the Examiner admits that *Ohayon* fails to disclose a means for heating. As such, the Examiner has relied upon the combination of several prior art references to reject Claims 1 and 28.

The Applicant additionally submits that *Ohayon* fails to disclose a gas generating cell as claimed in Claim 1. *Ohayon* only discloses a manual pump mechanism for increasing pressure within the reservoir and there is no disclosure within *Ohayon* suggesting the utilization of a gas generating cell to increase the pressure within a housing. Furthermore, *Ohayon*’s bald statement—pressure may be increased by a number of different ways known in the art—is unsupported by any disclosure within *Ohayon*, or any of the other cited references, showing such means.

Muramoto et al. is relied upon by the Examiner to compensate for *Ohayon*’s failure to disclose a means for heating an emanator material; however, *Muramoto et al.* also fails to disclose a gas generating cell. Furthermore, there is no disclosure within either reference suggesting modification of either reference to attain the Applicant’s claimed invention. Therefore, the combination of *Ohayon* and *Muramoto et al.* fails to teach, disclose, or suggest the Applicant’s claimed invention.

Based on the above reasoning, Applicant submits that independent Claims 1 and 28 are in condition for allowance and respectfully requests removal of the rejections. Similarly, because Claim 24 depends directly on allowable Claim 1 and includes each element of allowable Claim 1, the Applicant respectfully requests Claim 24 also be allowed.

Rejection of Claim 27

DeLuca is relied upon by the Examiner to compensate for the failure of *Ohayon* and *Muramoto et al.* to disclose a fan; however, similar to *Ohayon* and *Muramoto et al.*, *DeLuca* also fails to disclose a gas generating cell. Moreover, there is no disclosure within *DeLuca*, *Ohayon*, or *Muramoto et al.* suggesting modification of either reference to attain the Applicant’s claimed invention. As such, any combination of the cited prior art fails to teach, disclose, or suggest the Applicant’s claimed invention.

Claim 27 depends directly on allowable Claim 1 and as such, includes each element of allowable Claim 1. Therefore, the Applicant submits that Claim 27 is also in condition for allowance and respectfully requests the rejection of the claim be removed.

CONCLUSION


For the above reasons, the Applicant respectfully requests that the rejections under 35 U.S.C. 103(a) of independent Claims 1 and 28, and all claims depending directly or indirectly thereon, be withdrawn.

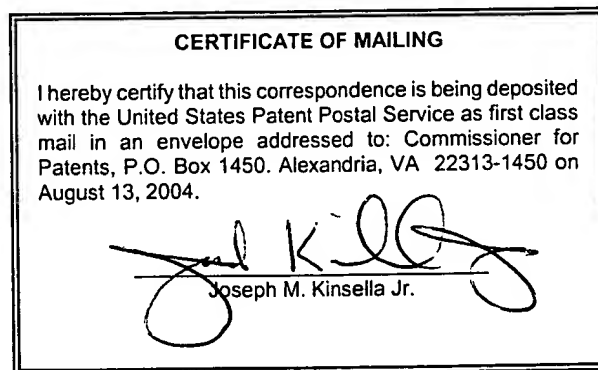
Should anything further be required, a telephone call to the undersigned at (312) 226-1818 is respectfully requested. If any charges or fees must be paid in connection with this Reply, they may be paid out of our Deposit Account No. 50-0545.

Respectfully submitted,

FACTOR & LAKE, LTD.

Dated: August 13, 2004


Joseph M. Kinsella Jr.
Attorneys for Applicant



**IN THE
UNITED STATES
PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: Ashok V. JOSHI

ATTY. DOCKET NO: MIC-98125CP01

SERIAL NO.: 09/649,563

CONFIRMATION NO.: 7691

FILED ON: August 28, 2000

FOR: CONTROLLED RELEASE OF
SUBSTANCES

**REQUEST FOR
EXTENSION OF TIME**

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION OF:
Art Unit 3752

EXAMINER:
Christopher S. Kim

Dear Sir:

If any charges or fees must be paid in connection with the following communication, they may be paid out of our Deposit Account No. 50-0545.

In accordance with 37 C.F.R. Section 1.136, Applicant respectfully requests an extension of the period in which to file the response to the Office Action mailed April 13, 2004, regarding the above-identified patent application, for an additional one month, from July 13, 2004 up to and including August 13, 2004.

In accordance with 37 C.F.R. Section 1.136, Applicant respectfully submits that a response was originally required to be filed on July 13, 2004, a period of three months from the mailing date of the Office Action; that the above-identified patent

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Micheal D. Lake	33727
William J. Lenz	44208
Joseph M. Kinsella Jr.	45743
Jacob D. Koering	51890
Nick Lee	54260

application is not involved in an interference proceeding; and that the Applicant herewith submits the one month small entity Extension of Time fee of \$55.00, pursuant to 37 C.F.R. Section 1.17(a).

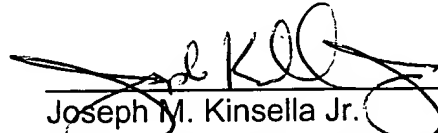
Applicant accordingly petitions for acceptance of the presently requested one month extension of time.

Should anything further be required, a telephone call to the undersigned, at (312) 226-1818, is respectfully invited.

Respectfully submitted,

FACTOR & LAKE, LTD

Dated: August 13, 2004



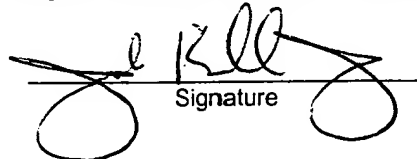
Joseph M. Kinsella Jr.
One of Applicants Attorneys

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Patent Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on August 13, 2004.

Joseph M. Kinsella Jr.

Name of Applicant, assignee, applicant's attorney or Registered Representative

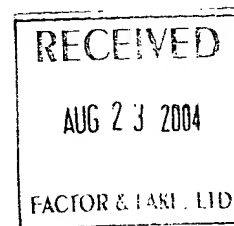
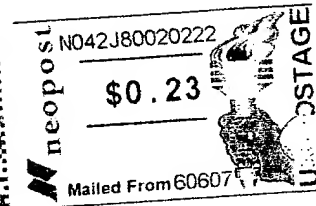
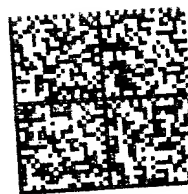


Signature

Serial Number: 09/649,563
Filing Date: August 28, 2000
Title: CONTROLLED RELEASE OF SUBSTANCES

Page 6
Dkt: MIC-98125CP01

Exhibit C



FACTOR & LAKE, LTD.
1327 W. Washington Blvd., Suite 5G/H
Chicago, IL 60607



August 13, 2004

The United States Patents and Trademark Office mailroom stamp hereon acknowledges receipt of the following:

RESPONSE TO OFFICE ACTION; EXTENSION OF TIME;
Check for Fee in the amount of \$55.00 and Certificates of Mailing.

In re:

Applicant:

Joshi et al.

Serial No.:

09/649,563

Filed On:

August 28, 2000

For:

CONTROLLED RELEASE OF
SUBSTANCES

98125CP01-MIC/JLF/8-04

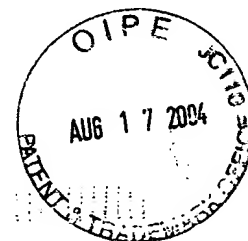


Exhibit D



UNITED STATES PATENT AND TRADEMARK OFFICE

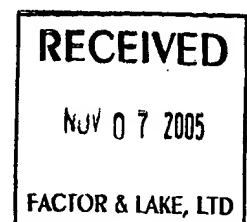
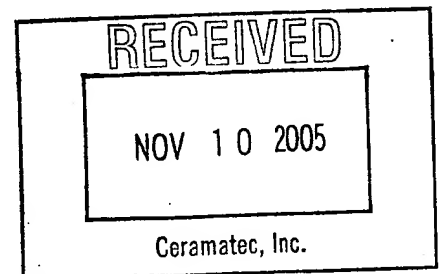
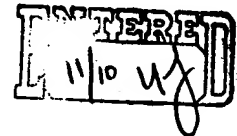
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,563	08/28/2000	Ashok V.. Joshi	MIC- 98125CP01	7691
22876	7590	11/02/2005	EXAMINER	
FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			KIM, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

File Transferred
9/23/05



Notice of Abandonment

Application No.

09/649,563

Examiner

Christopher S. Kim

Applicant(s)

JOSHI ET AL.

Art Unit


3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 13 April 2004.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Contacted attorney for applicant. The file was transferred to another law firm but the record contains no filing of a change of attorney.


Christopher S. Kim
Primary Examiner
Art Unit: 3752

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.